

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 549 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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DHANSUKHBHAI HIRALAL PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR ANIL S DAVE for Petitioner

MR HL JANI, APP for Respondent

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 22/10/1999

ORAL JUDGEMENT

Rule. Mr. H.L.Jani, learned Addl. Public  
Prosecutor waives service of notice of Rule on behalf of  
respondent-State.

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#. Present petitioner, who is original accused No.5

of Crime Register No.1543 of 1998 which has been registered with Prohi. Squad Southern Wing Region-III, Surat City based on a complaint filed on 26-12-1998 at 2245 hours by the Police, has filed the present petition for handing over the muddamal seized by the Police by quashing and setting aside the judgment dated 3-3-1999 rendered by the learned Addl. Sessions Judge, Surat in Criminal Revision Application No.47 of 1999.

#. After the complaint was registered, Police started investigation and muddamal in question was seized along with the truck by the Police. During the course of investigation, accused No.5-Dhansukhbhai Hiralal Patel submitted an application before learned Judicial Magistrate First Class, Court No.3 at Surat under Sec.451 of Cr.P.C. requesting to hand over the muddamal to him. According to him, muddamal in question is a perishable commodity and if he will not be handed over during the pendency of trial, then said muddamal will be destroyed or nothing will be remaining to be used by human being. After hearing the learned counsel for the respective parties, Court has passed a reasoned order on said application on 24-3-1999 rejecting the same mainly on the ground that muddamal in question is a perishable commodity which cannot be used for human being. It was also stated in the said order that as per the FSL report also, it is not a perishable commodity. Learned Magistrate has prima-facie come to the conclusion that applicant was not in a position to prove that he is dealing with the said goods and his intention was to send the goods in question to outside the State of Gujarat. Learned Magistrate has also come to the conclusion that goods in question have been seized on the same day in Surat City itself and intention of the applicant and other accused was to use the above muddamal in question for some other purpose as it cannot be used by human being. The petitioner, thereafter, preferred Criminal Revision Application No.47 of 1999 before the District and Sessions Judge. Learned Addl. Sessions Judge, vide order dated 3-6-1999 rejected the said application also. It is against the two concurrent judgments, present petitioner has filed the present Special Criminal Application.

#. Initially, notice was issued. Today, I have heard Mr.Anil Dave, learned counsel for the petitioner and Mr.H.L.Jani, learned APP for the respondent-State. Learned counsel for the petitioner has mainly argued that the goods in question are such a commodity that if the same is not handed over to the petitioner, then it will be destroyed and cannot be used by the human being.

Mr.Dave has further argued that goods were brought from Andhra Pradesh for the purpose of using the same as a cattle feed. He has also argued that in view of the unreported decision of this Court, goods are required to be handed over to the petitioner back and at the most, the petitioner may be directed to transfer the said goods from the State of Gujarat to the State of Andhra Pradesh. Learned APP, Mr.H.L.Jani has objected the same on the ground that this Special Criminal Application is against the two concurrent orders passed by the Court below and no illegality has been established in the orders passed by the Court below. Mr.Jani has further stated that generally the Court should not interfere in this type of petitions unless some illegality is established. He has further argued that even as per the order passed by the Court below and as per the record and proceedings, the goods in question have been seized from the accused in Surat itself. He has also argued that petitioner has not produced any documentary evidence to satisfy the Court that he is dealing with the muddamal in question as a businessman. He has also argued that the muddamal in question is not an eatable goods as per the FSL report and it has been brought only for the purpose of using the same for preparing country-made liquor. He has also argued that the judgment upon which the learned counsel for the petitioner has referred and relied before the Court below has been dealt with properly by the Court below.

#. It is not in dispute that the goods in question have been seized by the Police and as the same were lying as muddamal in the Court, present petitioner has claimed the same under Sec.451 of Cr.P.C. mainly on the reason that he is the owner of the goods and, therefore, he should be handed over the same. I have gone through the orders passed by two Courts. It is to be noted that no illegality has been committed by Courts. In this case, it appears that petitioner is not dealing in business of said goods. Even in the cause title, he has shown his occupation as agriculturist. Moreover, goods in question is a goods cannot be used by human being as per the FSL report. It also appears that goods are alleged to have been brought from the Andhra Pradesh, but admittedly same have been seized by the Police in Surat city itself from the present petitioner and, therefore, it is very difficult to accept the say of the present petitioner that it has been brought here for the purpose of sending the same into other State. Under the circumstances, the judgment relied upon by the petitioner will not help the petitioner. Then the question put forward by the petitioner comes that as the goods are perishable

commodities it will be destroyed if it will not be handed over to the petitioner. But that question does not arise because FSL report which has already been received in the case states that the goods in question are not perishable. Therefore, if any further order is required to be passed regarding destroying of the muddamal during the pendency of the trial, Court may do so if they are permitted by law. But the said muddamal cannot be handed over to the petitioner. In view of the above facts and circumstances, this Special Criminal Application is required to be rejected.

#. This Special Criminal Application stands accordingly rejected. Rule is discharged.

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